

HON. DAVID B. COHEN - Part 58 Rules
(Updated As of January 3, 2023)

71 Thomas Street, Room 305, New York, New York 10013
Principal Law Clerk: Catherine Paszkowska, Esq.
Assistant Law Clerk: Andrew Hile, Esq.
Part Clerk's Courtroom Phone Number: (646) 386-3347
Part Clerk's Email: SFC-Part58-Clerk@nycourts.gov

Counsel are hereby referred to the Uniform Rules for the Supreme Court and the County Court (22 NYCRR 202.2 et. seq.), effective February 1, 2021, and as amended July 1, 2022, which are incorporated by reference into the Part Rules set forth below.

E-Filing: The court strongly encourages all paper cases to be converted to e-filing. The link to the form to convert a case to e-filing is

<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/stipulation.and.consent.pdf>.

Conversion to e-filing is required where all parties are represented by counsel.

Additionally, parties are strongly encouraged to go to nycourts.gov or <https://iapps.courts.state.ny.us.webcivil> and click on e-Track to register so that you can follow your case. This service is free.

1. ADJOURNMENTS AND OTHER COMMUNICATIONS WITH THE PART CLERK AND CHAMBERS

A. All requests to adjourn conferences and oral arguments on motions require prior court approval at least two business days prior to the conference/argument date and must be directed to the Part Clerk at SFC-Part58-Clerk@nycourts.gov. Any stipulation adjourning a conference or motion **must** set forth a reason for the adjournment, **must** be so-ordered, and **must** be e-filed (or, on non-e-filed cases, filed with the court) at least one business day before the scheduled conference or argument.

B. A party seeking an adjournment of a conference or motion must confer with all other parties to ascertain whether there can be a stipulation to adjourn. If the parties cannot agree to an adjournment, they must set up a conference call with chambers or appear and make an application before the court at least two business days prior to the scheduled conference date or the return date of the motion.

C. Do not call chambers regarding other scheduling matters and uncontested requests for adjournments. Any such calls will result in your being directed to the Part Clerk.

D. Do not copy Justice Cohen, the Law Clerks, or the Part Clerk on letters, documents, or emails exchanged between counsel. The court will not read them and they will be discarded by the Part Clerk.

E. Ex parte communications are strictly prohibited. Every party must be copied on all communications with the court, including emails.

F. Counsel and self-represented litigants are under a continuing obligation to notify Part 58 in writing, and as soon as possible, if an action is settled, discontinued, or otherwise disposed of, if a case or motion has become totally or partially moot, or if a party has died or filed a petition in bankruptcy.

2. MOTION PRACTICE

A. Oral Arguments of motions are held on Wednesdays beginning at 9:30 a.m., or as otherwise directed. Motions may be scheduled for oral argument at the Judge's discretion. If oral argument is scheduled, you will be notified electronically, except where otherwise necessary.

B. Failure to appear for oral argument at the directed time may result in a default.

C. All summary judgment motions must be filed within 120 days after the filing of the note of issue, unless otherwise ordered by the court, or will be denied absent good cause shown for the delay. Additionally, in accordance with 22 NYCRR 202.8-g(a), this Court, in its discretion, directs that all summary judgment motions must contain a "short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried." Pursuant to 22 NYCRR 202.8-g(e), a movant's failure to submit an undisputed statement of facts will result in the denial of the motion with leave to renew upon proper papers, adjournment of the motion to allow the movant time to submit an undisputed statement of facts, or any other action this Court deems just and proper.

D. Part 58 is a paperless part and parties are not required to provide working copies of motion papers unless otherwise directed by the court.

E. For adjournments, see Rule 1.

F. Parties arguing motions must be familiar with the case on which they appear and be fully prepared and authorized to discuss and resolve the issues which are the subject of the motion. Attorneys who appear for argument of dispositive motions must also have settlement authority. Failure to comply with this rule may be treated as a default for purposes of Rule 202.27 and/or may be treated as a failure to appear for purposes of Rule 130.2.1.

G. If a motion has been withdrawn or otherwise resolved, the parties **must** immediately e-mail the Part Clerk at SFC-PART58-Clerk@nycourts.gov a stipulation or notice to this effect.

H. All notices of motion/cross motion, orders to show cause, affirmations, affidavits, memoranda of law, and exhibits to motions must be labeled and tabbed individually and must contain the motion sequence number on the upper right corner of the first page, whether e-filed or not. All motion papers and exhibits thereto must be e-filed separately and must contain a concise and accurate description of the document filed on NYSCEF.

The failure to comply with the foregoing may result in the denial of the motion. Any correspondence to the court regarding a motion must contain the motion sequence number to which it pertains or it will be disregarded.

I. If the parties have a discovery dispute, they **must** consult with each other in a good faith effort to resolve the same (22 NYCRR 202.7[a]). Such consultation may take place by an in-person, telephonic, or virtual conference (at the request of the parties, the Part 58 Clerk can facilitate such a virtual meeting). **In the event such an attempt is not successful, then the parties are required to e-mail the Part 58 Clerk at SFC-Part58-Clerk@nycourts.gov to arrange a conference with the court to attempt to resolve the issue(s).** If the dispute cannot be resolved by a conference with the court, then the party seeking relief may file a discovery motion. Leave of court is not required to file the motion but no motion may be filed unless the court has first conferenced the case. If such a motion is filed, the affirmation of good faith submitted in support of the same **must** “indicate the time, place and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held” (22 NYCRR 202.7[c]). The affirmation of good faith must also indicate the identity of the individual who conferenced the case with the parties (i.e., Justice Cohen or which of his Law Clerks), as well as the date on which the case was conferenced by the court. **Failure to comply with these requirements will result in the denial of the motion.** Additionally, the court has the discretion to decide a discovery motion on submission or to schedule a discovery conference in lieu of hearing argument on the same.

J. The parties are encouraged to resolve possible motions by stipulation whenever possible. For example, motions to amend a pleading, for an attorney to appear pro hac vice, to change venue, or to consolidate can often be resolved by the parties without judicial intervention. Where such a stipulation resolves a motion or extends a deadline previously set by the court, it must be e-mailed to the Part 58 Clerk at SFC-Part58-Clerk@nycourts.gov so that the court may so-order the same. A stipulation resolving a motion which requires a Clerk to take action, such as a motion to consolidate, change venue, or amend a caption or pleading, **must** contain language directing the Clerk to take such specific action in accordance with CPLR 8019(c) and, in e-filed cases, **must** be accompanied by NYSCEF form EF-22.

3. PRELIMINARY AND COMPLIANCE CONFERENCES

Discovery conferences will be held in person on Tuesdays at 10 am at 71 Thomas Street, Room 305, New York, New York.

However, if all parties to a case can agree to a discovery schedule ahead of time, they may submit a stipulation to the court by **3 pm on the Monday** before the scheduled conference, and then they will not need to appear for the conference. Instead, the stipulation will be reviewed, so-ordered, and filed and entered by the court. Otherwise, the parties must appear for the conference.

Counsel for all parties **shall** consult prior to a preliminary, compliance, or status conference about the resolution of the case, in whole or in part; discovery, including disclosure of electronically stored information, and any other issues to be discussed at the conference; the use

of alternate dispute resolution to resolve all or some issues in the litigation; and any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. **Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.**

Preliminary conference stipulations – must be emailed using this form –
http://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml

Compliance conference stipulations –the parties must draft a stipulation. **It must be drafted in Microsoft Word format or as a PDF.**

Proposed stipulations must be signed or e-signed by all parties before submission to the court.

The stipulation must be emailed to Justice Cohen’s Principal Court Attorney, Catherine Paszkowska, at cpaszko@nycourts.gov and to the Assistant Court Attorney, Andrew Hile, at ahile@nycourts.gov

A party’s failure to appear for a conference or to timely submit a proposed stipulation will result in the appearance being marked as a default as against the non-appearing party(ies), and the conference will be adjourned, or the case will be dismissed or the pleadings stricken, at the court’s sole discretion.

For Adjournments, see Rule 1. All scheduling inquiries are to be directed to cpaszko@nycourts.gov **and** SFC-Part58-Clerk@nycourts.gov, by email sent jointly or with a copy to all sides.

The parties are required to bring to the attention of the Part Clerk all pending motions relating to the case being conferenced, whether the motion(s) is pending in the Motion Submissions Part, or whether it has been fully submitted.

Except where a party appears pro se, an attorney **thoroughly familiar** with the action/proceeding and authorized to act on behalf of a party **shall** appear at a preliminary, compliance, or status conference and must be prepared resolve all issues which may arise. Failure to comply with this rule may be treated as a default for purposes of Rule 202.27 and/or may be treated as a failure to appear for purposes of Rule 130-2.1.

All orders must be legible, must indicate that the case is a Part 58 action, and must contain Justice Cohen’s name, as well as the names, addresses and telephone numbers of all counsel appearing at the conference.

There shall be strict compliance with the discovery deadlines set forth in preliminary conference orders, status/compliance conference orders, and case scheduling orders. Noncompliance with a court order may result in the imposition of sanctions, or other relief pursuant to CPLR 3126, against the offending party. Any application for an extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of the deadline. Such an extension may be granted by the court only upon good cause shown and where notice of the request is provided to all parties. Parties are to e-mail applications or

stipulations extending discovery deadlines to the Part Clerk and such requests must set forth, in reasonable detail, the reason for the adjournment. Any extension of time past a court-ordered deadline, by stipulation or otherwise, must be ordered by the court.

4. TRIALS

A. At the first appearance before Justice Cohen for trial, all parties shall provide: all marked pleadings and bills of particular, all notices to admit and responses thereto, any relevant case law, prior decisions bearing directly on the issues to be raised at trial, all motions in limine, a proposed verdict sheet (subject to revision), and a brief trial memorandum of law setting forth the relevant facts of the case and setting forth the legal arguments to be contested at trial. Counsel shall also advise the court of all witnesses and expert witnesses to be called at trial, as well as whether any interpreter(s) is required. In preparation for the charge conference, the parties shall provide the court with proposed jury instructions.

B. Post-trial motions shall be made within 15 days after verdict (CPLR 4405).